IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16/03/2007

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THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR.JUSTICE J.A.K.SAMPATH KUMAR

Writ Petition Nos.11704 & 13470 of 1998

W.P. No.11704 of 1998:
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1. K.Venkataraman

2. S.Hemamalini ..Petitioners

Vs

1. State of Tamil Nadu,
rep. by the Secretary to Government,
Home Department,
Fort St.George,
Chennai 9.

2. The Director General of Police,
Chennai 2.

3. The District Collector,
Cuddalore District,
Cuddalore.

4. The Superintendent of Police,
Cuddalore District,
Cuddalore.

5. The Sub Inspector of Police,
Crime Law & Order,
Town Police Station,
Chidambaram 608 001.

6. The Director,
Central Bureau of Investigation (CBI)
New Delhi.
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7. The Advocates Association,
High Court,
Madras
rep. by its Secretary Mr.P.K.Rajagopal ..Respondents

W.P. No.13470 of 1998:
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K.Nagaimugan
General Secretary,
Thani Thamizhar Kazhagam,
A 178,
West Namasivayapuram,
Chennai 600 094. ..Petitioner

Vs

1. The State of Tamil Nadu,
rep.by the Secretary to Government,
Home Department,
Fort St.George,
Chennai 600 009.

2. The Director General of Police,
Chennai 600 004. ..Respondents

Prayer:

These Writ Petitions are filed under Article 226 of the Constitution praying for the issuance of Writ of Mandamus, for the reliefs as stated therein.

For Petitioners : Mr.Yashod Vardan for Mr. Kannan

For Respondents : Mr. Edwin Prabakar, Govt. Advocate

COMMON JUDGMENT

P.K. MISRA, J

The Writ Petition in W.P.No.11704 of 1998 has been filed for issuance of mandamus directing the
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investigation in Crime No.328 of 1998 in the file of Sub-Inspector of Police, the 5th respondent herein, to be entrusted to the Central Bureau of Investigation (CBI), the 6th respondent herein and further direction to the State Government, the first respondent herein to pay a compensation of Rs.15 lakhs to the petitioners.

W.P.No.13470 of 1998 has been filed for writ of Mandamus directing the respondents to entrust the entire commission and omission of crimes relating to murder of Palanivelu and other connected matters to the Central Bureau of Investigation and to maintain public peace without being disturbed by political parties and communal groups in public interest at Chidambaram and in Cuddalore districts.

2. So far as the first prayer in W.P.No.11704 of 1998 and the prayer in W.P.No.13470 of 1998 are concerned, during the pendency of the Writ Petitions, investigation of such crime was entrusted to CBCID and thereafter, the trial was held and completed, ending in conviction of some of the accused persons and acquittal of some other accused persons. The first prayer in WP.No.11704 of 1998 and the prayer in WP.No.13470 of 1998, are, therefore, not necessary to be dealt with and, W.P.No.13470 of 1998 is liable to be disposed as infructuous. The only question required to be considered is payment of compensation.

3. The basic allegations, as contained in the affidavit in support of the Writ Petition, are as follows:

3.1 Petitioner No.1 is an Advocate practising in criminal side at Chidambaram Town for a considerable length of time. Petitioner No.2 is his wife and she is also an Advocate. Petitioner No.1 had occasion to function as Special Public Prosecutor in two high profile cases, wherein, the accused persons were various police officials of Chidambaram town. One such case is relating to the rape of one lady by the police officials and killing of her husband in the lockup. In the said case, seven police personnel including Inspector of Police were convicted by the trial Court. The other incident relates to murder of one Rajakannu in a police lockup in Kammapuram Police Station coming under the erstwhile South Arcot District. Investigation of the said case was entrusted to CBCID by the High Court. The High Court had directed for payment of compensation to the widow of the victim and also for launching of prosecution against the concerned police officials. Petitioner No.1 was appointed as Special Public Prosecutor in the said case. By the date of incident, i.e. 28.7.1998, which is the cause of action for filing the present Writ Petition and even at the time of filing the Writ Petition, such criminal case was pending trial.

3.2 The allegation of the petitioners is to the effect that because of such role of the petitioner No.1 as a Special Public Prosecutor in two cases, where the accused persons were the police officials, the local police had reasons to be prejudiced against petitioner No.1. While the matter stood thus, on 9.7.98, one Palanivelu, an Office Bearer of M.D.M.K. Political Party was killed in broad daylight. Two brothers, popularly known as "Vandayar brothers", high profile activists of the area, were the prime suspects in the said murder case. The incident of killing evoked virulent protest by almost all the political parties. Several politicians had visited Chidambaram towm during those days and many protest processions and meetings were being held. Some vandalism had also occurred and the situation in Chidambaram was very tense. On 15.7.1998, the representatives of all the political parties passed a resolution urging the Government to apprehend the culprits and it was also decided to hold an all party meeting at Chidambaram on 28.7.1998 to condemn the police inaction which was perceived as reluctance on the part of the police to apprehend the Vandayar brothers. Petitioner No.1 was the Advocate of the deceased Palanivelu as well as Vandayar brothers on many previous occasions was quite well known fact. On 16.7.1998, copy of the resolution of all party meeting, dated 15.7.1998 had been handed over to the District Collector. On 28.7.1998 in the afternoon, all party meeting was conducted at the junction of North Car Street and East Car Street, which was very

close to the house of the petitioners. At about 6.00 p.m., while the meeting was going on, lots of noise and protest were being raised against Vandayar brothers. Around 6.30 p.m., an unruly mob burnt an effigy of Sreedhar Vandayar and threw it on the car of the petitioner and the mob was attempting to enter inside the house of the petitioner and was raising threatening slogans against petitioner No.1, apparently because the mob perceived that petitioner No.1 being a leading criminal lawyer would defend the Vandayar brothers as he had done in the past. The mob broke into the house of the petitioners and ransacked the entire house. At around 6.30 p.m., the Petitioner No.1 had contacted the police over telephone. Subsequently, apprehending danger, the petitioners escaped to another place by jumping over the roof and walls of adjacent houses and they had to hide themselves. However, 88 years old mother of petitioner No.1, who was not in a position to escape, had to stay behind in the house and subsequently, when the mob entered and ransacked and damaged the articles, the old mother beseeched the mob not to harm her offering a gold ring and thereafter, they brought the house hold articles and furniture on the road outside and lit on fire. Even though, fire brigade people tried to come to the rescue and to prevent the fire from spreading, they were prevented to do so by the mob and some of the firemen were injured.

3.3 The grievance of the petitioner is to the effect that in spite of prior information that such untoward incident may happen as petitioner No.1 was perceived as defence lawyer of Vandayar brothers, no precautionary measures had been taken by the District Collector and local police and the district administration should not have permitted the holding of the meeting at a busy junction of Chidambaram. It is further asserted that at any rate after the petitioner informed about the imminent danger and attack of the mob around 6.30 p.m., no timely help was rendered by the police, thereby permitting the mob to enter inside the house of the petitioners and ransack and damage the movable properties. The petitioner has claimed that he had sustained a huge loss and had to spend about Rs.5 lakh for repairs to his house and therefore, respondent No.1 should pay the compensation of Rs.15 lakhs as the mob could take advantage of the culpable inaction of the police officials in controlling the mob and taking adequate safety measure.

4. In W.P.No.11704 of 1998, the State of Tamil Nadu and the Director General of Police has been impleaded as Respondent Nos.1 and 2 respectively and the District Collector, Superintendent of Police, Cuddalore District and the Sub-Inspector of Police, Crime Law and Order, Town Police Station, Chidambaram Town have been impleaded as respondent Nos.3,4, and 5 respectively. The Director, CBI, has been impleaded as respondent No.6.

5. A common counter affidavit was filed on behalf of the respondents 1 to 5 sworn to by the Deputy Secretary to the Government. Apart from denying the allegations made in the affidavit, raising the question of maintainability of the Writ Petition, such counter affidavit discloses the following aspects:

It is admitted therein that petitioner No.1 was appointed as Special Public Prosecutor in two cases and subsequently, there was conviction of seven police personnel. However, as expected the allegation that the local police bore grudge against petitioner No.1 has been denied. While admitting that the murder of Palanivelu had triggered the chain of events both political and communal in the vicinity of peaceful Chidambaram Town, it has been asserted that the District Police was taking prompt and suitable action and the law and order situation had been brought under the control. It has been further stated that for the various clashes, several criminal cases had been registered and several culprits had been apprehended. It is also admitted that all the political party meeting was arranged on 28.7.1998 at a place which was very near to the house of the petitioners. However, it has been asserted that a strong police force was deployed at the political party meeting under the supervision of the Deputy Inspector General of Police, Villupuram range.

5.2 It has been further stated in the common counter as under:

"9. .... On 28.7.1998 from afternoon onwards, 1000 of people from surrounding areas like Sethiathope, Kattumannargudi, Cuddalore District have poured into town using transports like Cars, Vans, Tractors and Lorries to make themselves attend the all party public meeting. The said crowd in the vehicles roamed in the four main streets of Chidambaram here and there. They widespread damages to the public properties as well as private properties. At the venue of meeting the Deputy Inspector General of Police along with two Superintendent of Police and adequate police force were present and properly deployed. A score of hundreds of miscreants have gathered in and around of his house thoroughly blocked by their vehicles like van and cars and thereby forbidding the movements of police party. They also indulged in arson. The allegation that the fifth respondent was informed over phone is totally denied. The fifth respondent was in bandobust duty. On coming to know of the activities of the miscreants the police party has taken all possible steps and measures to check and control the booliganism of rioting mob. The police party resorted to Tear Gas, lathi charge and police firing in order to have utmost control over the riot mob. I submit that some unruly elements in the pretext of the several political parties had gone astray and caused damage which was also controlled by the action of the police. The fire engine which came to extinguish the fire was also blocked by the mob and the mob also started attacking the fire personnel and thereby prevented the fire person from discharging their duties and the fire personnel also sustained injuries. The police personnel who are sent to disperse the mob, have also sustained injuries due to the stone throwing of the mob. It is submitted that the police personnel and the District Revenue Officials were also present through out day and they were assisting the police in controlling the violence. It is submitted that on a routine complaint as well as the special report given by the police personnel, the Inspector of Police, Chidambaram town who is not the respondent herein had registered a case in Crime No.328/98 under Sections 147, 148, 448, 436, 427, 380 and 307 IPC read with Section 4 of the Tamil Nadu Prevention of Property Destruction and Loss Act. It is submitted that in this crime number four persons have been arrested on 5.8.1998 and 8.8.1998 and they were sent to judicial custody in Sub-Jail, Chidambaram."

5.3 It has been further asserted that the aged mother of the petitioner was rescued by the police party. Further assertion was made in para 11.

"11. The averments made in paragraph-12 of the affidavit are hereby denied. It is submitted that immediately on receipt of the information that the petitioners' house was attacked the police party under the supervision of the Superintendent of Police went to the scene of occurrence and took effective steps to control the mob. Lathi charge was also done and tear gas was used to disperse the mob as the road was blocked, the fire engine could not make entry in the road and only after clearing the road, the fire engine came and put out the fire. The allegation that the entire house was under the custody of the miscreants from 6.30 p.m. To 9.00 p.m. are exaggerated and are not true."

5.4 In other paragraph, the details of the various arrangements made, have been furnished. The counter affidavit has also highlighted the protection given to petitioner No.1 after the incident was over.

6. Respondent No.5 who was the Sub-Inspector of Police at the relevant point of time, has filed a brief counter stating that he was absent from Chidambaram on 28.7.1998 and therefore, the petitioner could not have contacted him at 6.30 p.m. Incidentally, it may be pointed out that admittedly such phone call was received by Chief Constable who has stated so in his deposition as a prosecution witness in the connected criminal trial. Such statement indicated that a phone call was received from a person claiming to be K.V.Venkataraman at 6.30 p.m. Such statement further states that Head Constable had contacted the fire brigade people immediately and that is how the fire

brigade people rescued the people at that tense.

7. The fourth respondent, the then Superintendent of Police, has also filed a separate counter affidavit which is more or less similar to the common counter filed on behalf of the respondents 1 to 5. In the said counter affidavit, it has been admitted:

"6. I further submit that the petitioner is a long standing legal practitioner appearing on behalf of the Vandaiyar brothers. They were the main absconding accused concerned in the murder of said MDMK office bearer Palanivelu. The petitioner was appearing on behalf of Vandaiyars for the Civil and Criminal cases filed against them and their associates. That immediately after the involvement of Vandaiyar brothers in the gruesome murder came to light, the petitioner has come forward with a press statement, disassociating himself from all the legal battles fought on behalf of Vandaiyar brothers in various courts. The said statement of petitioner was also published in all local news papers on 30.07.1998. And it is not correct to say that respondents 1 to 5 did not take any action. The case of murder of Palanivelu in Town Police Station Chidambaram was immediately transferred to the CBCID and Senior Police officers camped in Chidambaram to detect this case. Few persons who surrendered before Police were interrogated and the correct persons who organised this murder were identified. Several teams were formed to arrest the accused in this case."

7.1 Respondent No.4 has further admitted that the petitioner's house was very much close to the dais of the public meeting. The meeting started around 5.30 P.M and the crowd assembled at the meeting place were about 25,000. It has been further stated by him that as soon as he received the information about the attack of the house of the petitioner, he instructed the concerned officials to take action and rushed to the scene of occurrence. As he was nearing the residence of the petitioner, it was found that fire service vehicle has been attacked by the miscreants. It has been further stated :

"10. ... The police party that entered into the house of petitioner under S.I. Tr. Sundaramoorthy, dispersed the mob and arrested 4 of the miscreants on the spot.

11. Myself and the police party of S.Is Tr. Singaravelu and S.I. Tr. Sundaramoorthy entered into the house of the petitioner in order to rescue the inmates if any. Since the house was ransacked and since there were no lights at that time, after a thorough search we rescued the old mother of the petitioner safely and handed her over to her relatives. Meanwhile Tr. Balakrishnan has persuaded me to save the mother of the petitioner even without knowing the rescue f the mother of petitioner. During the time of rescue, the riotous mob pelted stones on the police party and as a result S.I. Tr. Sundaramoorthy, HC 1937 Radhakrishnan, PCs.1554, Rajasekaran and 2328 Kumaresan were injured. The S.I. Tr. Sundaramoorthy sustained grievous injury on his head and he was admitted to Cuddalore H.Qrs Hospital and other police personnel were admitted to Chidambaram Hospital. Inspite of the retaliation of the armed unruly mob and inspite of grievous injury, such officers dared to enter a burning house and rescued the mother of the petitioner even when the petitioner left his mother to the tender mercy of the rioters. The unruly mob was chased by the police personnel and five of them were arrested. The remaining mob mingled with the crowd who were assembled in front of the dais being addressed by very senior leaders. On the complaint of the injured Head constble Radhakrishnan a case in Chidambaram Town PS Cr.No.326/98 u/s.147, 148, 332 and 506(ii) IPC altered into 307 IPC was registered."

7.2 The further stand of Respondent No.4 is to the effect:

"15. I submit that it is true that the fire service men could not reach the house of the petitioner as the miscreants attacked the vehicle and firemen, in which 7 firemen were injured. The grave

situation prevailing at the scene of occurrence was like a guerilla war between the police party and unruly riotous mob. The petitioner has also already indicated about the shock and panic over the entire town. The police were engaged in pitched battles with murderous mobs in many places in the town. Simultaneously loss of any life was prevented. However priority was given to the incidents that took place near the house of the petitioner. If the police had mishandled the situation as stated by the petitioner, then there would have been heavy loss of life. In the event of any mismanagement by the police, a stampede could have taken place at the vicinity of said public meeting resulting into the loss of lives of innocent public which is so precious than that of any other consideration. Therefore it is not correct that no action was taken inspite of his information to police. I further submit that the petitioner was reportedly not at his house but took shelter in the nearby house and has returned to the scene of occurrence only around 00.30 hrs."

8. The then District Collector of Cuddalore, Respondent No.3, has also filed a counter, which is similar to the counter filed on behalf of Respondents 1 to 5. In such counter, it has been stated inter alia:

"... At the time of meeting a unruly mob went to the residence of petitioner which is very nearer to meeting spot to burnt the effigy of Sridhar Vandayar and throw the burning effigy on the car of the petitioner and entered into the house, caused damages to household properties and vehicles. To disburse the unruly mob, three tear gas shells were burst and five rubber bullets were fired and the mob was chased by the police. Besides that, a wine shop and some of vehicles were also damaged by the unruly mob. In this incident some of police personnel sustained injuries. As a public meeting was going on with large gathering and as the meeting place is very nearer to the petitioner's house, the situation ha to be handled very tactfully. Had the Police and Revenue officials taken any hasty action, it would have caused great havoc in that situation, resulting into great loss of lives which is more value than that of anything. As the officials had handled the situation properly on the day of meeting, any loss of lives of innocent public and great damages to properties were averted."

9. An additional counter affidavit has been filed on behalf of Respondents 1 to 5 in 2005, wherein apart from reiterating the main averments made in the earlier counter affidavit, it has been stated that statement of the Government Advocate to the effect that question of compensation was under consideration has been made without instructions and the Government is not bound by such statement made by the Government Advocate while the matter was pending before the High Court.

10. A reply affidavit has been filed by the petitioners wherein it is stated that he had defended the deceased Palanivelu and his family members in three murder cases and he had also similarly defended Vandaiyar brothers. It has been stated that "It was perceived that I would be called upon to appear for Vandaiyar brothers if they were to be proceeded against." It has been further stated :

"6. Our house in Chidambaram wherein our offices are located is situated in North Car street, less than half a kilometer away from the Town Police Station located on West Car Street. It has been admitted in the counter affidavits of the respondents that the murder of Palanivelu had triggered a chain of political and communal events in Chidambaram and an extremely tense situation was prevailing. The District Collector has stated that the representatives of political parties had handed over on 16.7.1998 a resolution to the effect that an all party meeting would be held in Chidambaram Town on 287.1998. Considering the tense situation prevailing in the town, the administration should have directed the venue of the meeting to be fixed outside the town limits and should not have granted permission for holding the meeting in the busy town. The administration however despite adequate notice did not act in the matter. The meeting was held on 28.7.1998 at the busy junction of North Car street and East Car street, a venue that was very close to our house. Our house is situated within the meeting range i.e. on either side of our house mikes and tube light were fixed for the

meeting. Further North Car Street and East Car Street at Chidambaram is a National Highway (NH 45-A) with heavy traffic at all times."

10.1 The other allegations made by the respondents regarding making of adequate arrangements have been denied. It has been further stated :

"9. ... Inspector of Police Subbiah has admitted in his deposition in the Sessions Case that I had indeed made such a call and that he was in the police station. The trial court has clearly observed that the said Inspector had handled the situation very lethargically as he did not choose to go to the spot. Instead he sent two constables to inform about the same to another Inspector In the teeth of such evidence, the respondent has deliberately given a wrong statement before this Hon'ble Court by denying my having made a phone call. The animosity of the police towards me will also be evident in the above circumstances."

10.2 It has been further stated:-

"11. The respondents want to show their bravery by saying that police personnel who went to disperse the mob also got injured. It is seen from the accident register that the policemen sustained injuries around 8 p.m. on the occurrence day although it is admitted that the occurrence started at 6.30 pm. The fire personnel got injured at 7 p.m. All these will establish that the police did precious little between 6.30 and 8 pm that day. Had they acted immediately the occurrence could have been prevented or atleast contained.

15. The statement of the S.P.,Cuddalore that 2 S.Ps., 10 DSP's, 20 Inspectors, 50 S.I's and 500 other ranks led by DIG, Villupuram were employed on 28.7.98 is strongly denied. The trial court has conclusively held that the occurrence could have been avoided if the police had acted diligently."

11. From the averments made in the affidavits of the petitioner and more particularly from the averments made in the counter affidavit, it can be concluded that the following facts are no longer in dispute:

(1) A meeting was held at a place which was very near to the house of the petitioner on 28.7.1998 and there was a huge gathering (25000 according to the counter of the Collector).

(2) Previous intimation had been given atleast 10 to 12 days before, stating that such meeting would be held protesting against the inaction of the police in not bringing the guilty persons to book and the ire of the political parties was on account of the fact that Vandaiyar brothers had not been apprehended.

(3) Petitioner No.1 had appeared as a lawyer for Vandaiyar brothers on many previous occasions and, therefore, it was widely believed that he would be the Advocate for Vandaiyar brothers.

(4) Petitioner No.1 had appeared as Public Prosecutor in two high profile cases against the police officials of Chidambaram town. In such case, seven police officials had been convicted and the other case was pending trial at that stage.

(5) While the meeting was going on, the effigy of Vandaiyar was burnt and those materials with fire were thrown on the car belonging to Petitioner No.1.

(6) A mob had entered inside the house of Petitioner No.1 and ransacked the same.

(7) Petitioners had escaped, but Petitioner No.1's mother could not escape and remained behind and she was subsequently rescued on the intervention of the Police Superintendent and other officials.

(8) When the fire brigade proceeded towards the house, it was prevented and many of the firemen were injured. Some of the police personnel had also been injured.

(9) A phone call was received at the police around 6.30 p.m. regarding the attack on the house of Petitioner No.1.

12. Keeping in view the above admitted/undisputed background, learned counsel for the petitioners has submitted that the police personnel did not take sufficient measure to protect Petitioner No.1 and his properties. It has been further submitted that this happened on account of simmering animosity of the police people against Petitioner No.1, as he was the Special Public Prosecutor against the police officials involved in commission of serious crimes.

13. One of the main question to be decided is whether there was culpable inaction on the part of the police in trying to protect the property of the petitioners. It is stated by the police officials and the Collector that the mob dispersed after the police used tear-gas to drive away the mob. The relevant question is at what time the police took such steps.

14. From the materials on record, more particularly the Injury Certificates relating to firemen, it is apparent that the firemen belonging to fire brigade received their injuries around 6.40 p.m., whereas the police personnel who were injured appear to have received their injuries at 8.00 p.m. Since the telephonic intimation regarding the attack was received around 6.30/6.35 p.m., one would ordinarily expect the police rush to the house of the petitioners soon thereafter, particularly when the police station was merely a half kilometre away. The mere fact that firemen tried to do some rescue work and were injured around 6.40 p.m. clearly indicates that they had rushed to the spot soon after hearing about the incident. On the other hand, the fact that policemen were injured around 8.00 p.m. would clearly indicate that till that time the policemen had not tried to take any effective steps and obviously were standing as mute spectators.

15. Even though in the counter affidavit of the Superintendent of Police it is stated about the number of police had been deployed in Chidambaram Town, the counter affidavit does not disclose as to how many police personnel were deployed at the place of the meeting. If the police personnel were deployed in different parts of the town, such deployment was not obviously going to help in the matter. Even though an additional affidavit has been filed as late as in October, 2005, no details have been furnished in such affidavit as to number of police deployed at the place where the meeting had taken place. Since Petitioner No.1 was a high profile lawyer practising in criminal side in Chidambaram town and had also defended Vandaiyar brothers, the main suspects in the murder, it is natural for the public to perceive that he would also defend Vandaiyar brothers in the said case and obviously this would have been also within the knowledge of the police department, which is armed with its own source of intelligence. Since the meeting was being organised protesting against the inaction of the police in not arresting the Vandaiyar brothers and since at that stage it was widely perceived that Petitioner No.1 would be their lawyer, it does not require much intelligence to comprehend that the ire of the crowd was also likely to be against Petitioner No.1, more particularly when his house was very near the place of the meeting. In normal course, therefore, one would have expected the Police Department to be careful by posting more police people in order to prevent any possible attack on the house of Petitioner No.1. Even apart from the above facts, when the fire brigade dared to come and tried to rescue immediately after receiving the message, one would have expected the police, with the authority and power under its command, to be more active. It is quite evident that for atleast 1= hours no worthwhile attempt has been made by the police to come to the

rescue of Petitioner No.1.

16. It is no doubt true that about 4 or 5 police personnel had been injured. Since such injuries took place, as per their statement, at about 8.00 p.m., the natural question arises as to what the police was doing before 8.00 p.m. This question assumes much more importance in view of the fact that fire brigade could dare to intervene soonafter receiving the message. From the aforesaid, the inevitable conclusion is that even after receiving the message relating to attack, the police available at the spot and the police available at other places did not make any sincere effort to control the mob and to prevent injury to the petitioners and their properties.

17. Learned counsel for the respondents submitted that the damage was caused by a mob and therefore compensation cannot be claimed from the State Government or the police as they were not directly responsible. So far as this aspect is concerned, the matter is no longer res integra so far as Madras High Court is concerned in view of the decision of the Full Bench reported in 2006(5) CTC 97 (P.P.M. Thangaiah Nadar Firm, rep. by its Partner T.P. Prakasam, No.154, New Colony, Tuticorin and others v. The Government of Tamil Nadu, rep. by its Chief Secretary, Fort St. George, Chennai 9 and others) In such decision it has been observed :-

"38. Now the inevitable end of the journey or may be beginning of another. In view of the various decisions noticed by us and many other decisions referred to in such decisions, the following conclusions can be reached. The State is not necessarily liable in every case where there is loss of life or damage to the property during rioting. Where, however, it is established that the officers of the State ordained with duty of maintaining law and order have failed to protect the life, liberty and property of person and such failure amounts to dereliction of duty, the State would be liable to pay compensation to the victim. Such liability can be enforced through Public Law remedy or Common Law remedy. Where, necessary facts to establish culpable negligence on the part of the officials are available, the High Court under Article 226 can issue appropriate direction. Where, however, the main aspect relating to culpable negligence of the officer is seriously disputed, filing of suit may be more appropriate remedy. No hard and fast rule can be laid down on these aspects and obviously the availability of remedy under Article 226 would depend upon the facts and circumstances of each case. Compensation for loss to the property can also be claimed under Article 226 and merely because right to property has been deleted from the Chapter of Fundamental Rights and has been recognised as a Constitutional right, would not disentitle the High Court to examine that question in any appropriate case."

18. In view of analysis of the materials on record, the inevitable conclusion is that the police did not bother to take adequate steps to prevent mischief to the properties of the petitioners. Whether such inaction was prompted by the animosity of the local police against Petitioner No.1 or otherwise is not very much material. The fact remains that adequate steps were not taken before and during the incident. In our opinion, therefore, the State can be held responsible and directed to pay compensation.

19. It was faintly argued that the duty to maintain law and order is a part of the sovereign function of the State and since this incident is connected with the question of maintenance of law and order, the State should be considered as an immune from being proceeded against in view of the provisions contained in Article 300 of the Constitution of India.

20. We do not think such a contention is available to be raised by the respondents as the damage caused is not on account of any positive action taken by the State while maintaining law and order. For example, during rioting the police resorts to take lathi charge or such other measures, a victim

possibly cannot claim damages against the State as such damage is occasioned on account of exercise of sovereign function, that is to say, maintenance of law and order. The question here is not whether the damage was caused while the police was trying to maintain the law and order. On the other hand, the damage was caused on account of culpable inaction on the part of the police in taking adequate measures. According to us the doctrine of exercise of sovereign power is not applicable.

21. The next question is relating to the extent of compensation to be paid. The petitioners have claimed a sum of Rs.15 lakhs. It has been stated that value of the property damaged was Rs.9,44,000/- and the petitioner had to spent Rs.5 lakhs for repairing the house. So far as damage to the house is concerned, apart from the averments made by the petitioner, there is no other material in support of such claim and the petitioners have not filed any accounts to substantiate such claim. However, so far as damages caused to the movable properties are concerned, it appears that such valuation has been given in the criminal prosecution. As a matter of fact, on the very next day after the incident, the petitioner had given such a valuation in his representation giving the details. Such a valuation is therefore can be safely adopted.

22. From the letter to the Revenue Divisional Officer along with the annexure, it appears that the petitioner had valued the Ambassador car, which was damaged, at Rs.3 lakhs and Kinetic Honda scooter at Rs.40,000/-. At the time of hearing and in the written submissions, learned counsel for the petitioner has fairly submitted that a sum of Rs.2,15,000/- was received towards the loss of car and a sum of Rs.24,200/- was received towards the loss of scooter. Since the amount payable towards loss of the car and scooter has been received, the claim of Rs.3,40,000/- on these two heads from the claim of Rs.9,44,000/- is to be reduced and the balance amount comes to Rs.6,04,000/-. Even though the accounts relating to damages to the house were not available, a reasonable amount can be fixed on the footing that the petitioners had to repair the damaged house. Considering the fact that such incident took place in 1998 and taking an overall view of the matter, in our considered opinion, interest of justice would be served by directing the respondent State to pay a sum of Rs.7,00,000/- (Rupees seven lakhs only) as compensation to the petitioners. Such amount should be paid within a period of sixty days from the date of receipt of the present order, failing which such amount would become payable with 10% interest thereafter.

23. In the result, W.P.No.11704 of 1998 is partly allowed to the extent indicated above and W.P.No.13470 of 1998 is disposed of as infructuous. There would be no order as to costs.

suk/dpk

To

1. The Secretary to Government,
State of Tamil Nadu,
Home Department,
Fort St.George,
Chennai 9.

2. The Director General of Police,
Chennai 2.

3. The District Collector,
Cuddalore District,
Cuddalore.

4. The Superintendent of Police,
Cuddalore District,
Cuddalore.

5. The Sub Inspector of Police,
Crime Law & Order,
Town Police Station,
Chidambaram 608 001.

6. The Director,
Central Bureau of Investigation (CBI)
New Delhi.

7. Mr.P.K.Rajagopal,
Secretary,
The Advocates Association,
High Court,
Madras

[PRV/9915]